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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,717	08/09/2001	Richard Fischbeck	00-106	6856

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EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/928,717

Applicant(s)

FISCHBECK, RICHARD

Examiner

Phi D. A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32,33,35,36,42-47 and 51-60 is/are pending in the application.
- 4a) Of the above claim(s) 51-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32,33,35,36,42-47 and 60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/28/07 has been entered.

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species: figures 4-5, figure 6, figure 7, figure 9, and 14. The species are independent or distinct because they each contain structures independent and distinct of each other.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an

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allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

2. Newly submitted claims 51-59 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are to non-elected specie of figure 6 to right circular cone while prosecution has thus far been to the specie of figure 5.
5. See also office action of 12/15/03 to the same issue.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 51-59 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 32-33, 35-36, 42-43, 46-47, 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chamberlain (4270320) in view of Hein (3359694).

Chamberlain shows a structure comprising a plurality of curving elements (26), each element of the plurality of curving elements having a base, a wall and a vertex, the elements being arranged such that a distance and a direction of displacement between any two cone bases of adjacently placed conical elements being infinitely variable between and minimum limit and a maximum limit (the limits not yet known), the element being a circular and said base being a circular base, the curving elements being placed in an overlapping arrangement (figure 15a) with a portion of the cone wall said adjacent element so as to form said shell, the elements being arranged such that the vertex of the circular cone points outward from the shell, the portion of the circular base of the first circular element overlaps a portion of said wall of at least three adjacent curving elements, so as to form the shell having a closed surface (figure 15a), the overlapping arrangement further includes an overlap of a portion of the circular base of the first element with a portion of the wall of at least a second element, a third element, and a fourth element, a first amount of overlap between the first element and the second element forming a first strut distance and direction between the vertexes of the first element and the second element, a second amount of overlap between the first element and the third element forming a second strut distance and

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direction between the vertexes of the first element and the third element, a third amount of overlap between the first element and the fourth element forming a third strut distance and direction between the vertexes of the first and fourth elements, the first strut distance and direction being any distance and direction between the minimum and maximum limits (the limits are not yet known), the second strut distance and direction being any distance and direction between the maximum and minimum limits, the third strut distance is any distance and direction between the minimum and maximum limits, an opening is formed in the shell to provide access to an inner space of the shell (col 2 lines 7-12), the element having an element length defined by a length of the wall from the base to the vertex and wherein the maximum limit is slightly less than a sum of the element lengths of any two adjacent elements, the element having an element length defined by a length of the wall from the base to the vertex and wherein the minimum limit is slightly greater than one-half of a sum of the element lengths of any two adjacent elements.

Chamberlain does not disclose the elements being conical elements.

Hein (figure 1) shows conical elements (I, H, and ABCGE) connected to each other to form a domical structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Chamberlain's structure to show the elements being conical elements as taught by Hein because the conical elements enables the formation of a decorative dome shape structure as taught by Hein.

Per claims 42-43, 46-47, Chamberlain as modified by Hein further shows the conical elements having the angular deficit α of the conical element varies in magnitude from the angular deficit α of an adjacent conical element, the plurality of conical elements including

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two groups of conical elements, each group having different magnitude of the angular deficit Alpha, the conical elements of the groups being arranged in an alternating pattern (figure 3 of Hein), the conical elements being constructed of sheet material from a group of material consisting of paper fiber products, sheet metal, polymeric material, a fastening means (adhesives) for attaching the conical elements to one another, the conical elements are placed in an overlapping arrangement wherein a portion of the base of the first conical element overlaps with a portion of the cone wall of the adjacent conical element so as to form the shell.

3. Claims 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chamberlain (4270320) in view of Hein (3359694) as applied to claim 32 above and further in view of Fuller (3203144).

Chamberlain as modified shows all the claimed limitations except for a skin that is placed over the shell, the conical elements being arranged with the vertex of the conical elements facing inward and the vertex of other ones of the conical elements facing outward so as to form the shell having an irregular shape.

Fuller shows a skin that is placed over the shell, the conical elements being arranged with the vertex of the conical elements facing inward and the vertex of other ones of the conical elements facing outward so as to form the shell having an irregular shape.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Chamberlain's modified structure to show a skin that is placed over the shell, the conical elements being arranged with the vertex of the conical elements facing inward and the vertex of other ones of the conical elements facing outward so as to form the shell having an irregular shape because having a skin over the structure would provide an extra layer of

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protection for the structure against the elements as taught by Fuller, and having the vertex facing inwardly and outwardly as taught by Fuller, would provide a shell having an aesthetic design.

Response to Arguments

3. Applicant's arguments with respect to claims 32-33, 35-36, 42-47, 60 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different geodesic designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Phi Dieu Tran A

5/28/07